Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

Bruce W. Cattell, Warden,
Petitioner

v. No. 05-6

Delvin White,
Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

Delvin White moves to proceed in forma pauperis.

As grounds, Mr. White states:

1. He prevailed on his petition for writ of habeas corpus in the First Circuit and has been directed by this Court to respond to the Petitioner's Request for a Writ of Certiorari.

2. White has been incarcerated continuously since 1996. He had appointed counsel at trial and on appeal. This office has continued to represent him in federal court on a pro bono basis. The Court has previously permitted him to proceed in forma pauperis, when he sought a writ of certiorari. White v. New Hampshire, No. 00-9141 (cert. denied, June 25, 2001). The federal district court in New Hampshire, as well as the First Circuit, have likewise allowed him to proceed in forma pauperis.

3. White is serving a 30-90 year sentence in the New Hampshire State Prison. As the attached affidavit makes clear, he has effectively no income.

WHEREFORE, Mr. White respectfully requests that this Honorable Court grant his request to proceed in forma pauperis.

Respectfully submitted,

By _____

David M. Rothstein
Deputy Chief Appellate Defender
Appellate Defender Program
2 White Street
Concord, NH 03301

Form 4.
Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis

United States District Court for the District of _____

A.B., Plaintiff

v. Case No._____

C.D., Defendant

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct.(28 U.S.C. § 1746; ~~18 U.S.C. § 1621.~~)

Signed: [signature]

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: August 25, 2005

My issues on appeal are:

1. For both you and you spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 65.00	$ N/A	$ 65.00	$ N/A
Self-employment	$ 0	$ N/A	$ 0	$ N/A
Income from real property (such as rental income)	$ 0	$ N/A	$ 0	$ N/A
Interest and dividends	$ 0	$ N/A	$ 0	$ N/A

Gifts	$ 0	$ N/A	$ 0	$ N/A
Alimony	$ 0	$ N/A	$ 0	$ N/A
Child support	$ 0	$ N/A	$ 0	$ N/A
Retirement (such as social security, pensions, annuities, insurance	$ 0	$ N/A	$ 0	$ N/A
Disability (such as social security, insurance payments)	$ 0	$ N/A	$ 0	$ N/A
Unemployment payments	$ 0	$ N/A	$ 0	$ N/A
Public-assistance (such as welfare)	$ 0	$ N/A	$ 0	$ N/A
Other (specify):	$ 0	$ N/A	$ 0	$ N/A
Total Monthly income:	$ 65.00	$ N/A	$ 65.00	$ N/A

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
D.O.C. Dept. of Corrections, NH (inmate employee)	Berlin, NH	02/01 - current	65.00/month
Independent contractor Trucker	Manchester, NH	1993-1995	~ $2,000

3. List your spouses's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			

4. How much cash do you and your spouse have? $ 200.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
NONE		$	$
		$	$
		$	$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)
NONE

Other real estate (Value)
NONE

Motor Vehicle #1 (Value)
Make & year: NONE
Model:
Registration #:

Motor Vehicle #2 (Value)
Make & year:
Model:
Registration #:

Other assets (Value)
NONE

Other assets (Value)

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home mortgage payment (include lot rented for mobile home)	$ NONE / 0	$ N/A
Are any real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	$ 0	$
Home maintenance (repairs and upkeep)	$ 0	$
Food	$ 60.00	$
Clothing	$ 0	$
Laundry and dry-cleaning	$ 0	$
Medical and dental expenses	$ 0	$
Transportation (not including motor vehicle payments)	$ 0	$
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$
Insurance (not deducted from wages or included in Mortgage payments)	$ 0	$
Homeowner's or renter's	$ 0	$
Life	$ 0	$
Health	$ 0	$
Motor Vehicle	$ 0	$
Other:_____	$ 0	$
Taxes (not deducted from wages or included in Mortgage payments)(specify):_____	$ 0	$

Installment payments	$ 0	$ N/A
Motor Vehicle	$ 0	$
Credit card (name):_____	$ 0	$
Department store (name):_____	$ 0	$
Other:_____	$ 0	$
Alimony, maintenance, and support paid to others	$ 0	$
Regular expenses for operations of business, profession, or farm (attach detailed statement)	$ 0	$
Other (specify):_____	$ 0	$
Total monthly expenses:	$ 60.00	$

9. Do you expect any major changes to your monthly income or expenses in your assets or liabilities during the next 12 months?

☐ Yes ☐ ~~No~~ If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ ~~No~~

If yes, how much? $_____

If yes, state the attorney's name, address, and telephone number:

_____

N/A

_____

_____

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ ~~No~~

If yes, how much? $_____

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

- I have been incarcerated since 1996

13. State the address of your legal residence.

Northern NH Correctional Facility
138 Milan Rd, Berlin NH

Your daytime phone number: NONE

Your age: 61 Your years of schooling: 14

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ATTACHMENT TO MOTION/AFFIDAVIT TO PROCEED IN FORMA PAUPERIS WITHOUT PREPAYMENT OF FEES

CERTIFICATE OF CUSTODIAL INSTITUTION

REGARDING Danny Locke #31444
(Name of Applicant)

Name of Institution: N.H. State Prison

Address of Institution: P.O. Box 14
Concord, NH 03301

1. I hereby certify that for the six-month period immediately preceding this date the applicant has had average monthly deposits to his/her account of $ 110.58.

2. Further, I certify that for the six-month period immediately preceding this date the applicant has maintained an average monthly balance in his/her account of $ 657.95.

3. I attach a certified copy of the applicant's trust account statement for the six months preceding the submission of this certificate.

Virginia M Fournier
Authorized Officer of Institution

Acct Tech
Title

2/25/05
Date

USDCNH-14 (Revised 2-97) (Previous Editions Obsolete)

AUTHORIZATION FOR RELEASE OF RECORDS

I, Danny Locke, hereby authorize the Department of Corrections to release to my attorney, Christopher M. Johnson, records relating to my prison account.

Danny Locke

Danny Locke

Dated: February 8, 2005

Notary Public

RICHARD A. MANSEAU
Justice of the Peace
State of New H...
My Commissio...

My commission expires: 5/21/08

IN THE
SUPREME COURT OF THE UNITED STATES

Bruce W. Cattell, Warden,
Petitioner

v. No. 05-6

Delvin White,
Respondent

PROOF OF SERVICE

I hereby certify that I have served a copy of this Motion to Proceed in Forma Pauperis this 16th day of September, 2005, by U.S. Mail, to Stephen D. Fuller, Counsel of Record, Senior Assistant Attorney General, N.H. Department of Justice, 33 Capitol Street, Concord, N.H. 03301, (603) 271-3671.

Respectfully Submitted,

By _____

David M. Rothstein
Counsel of Record
Appellate Defender Program
Two White Street
Concord, N.H. 03301
(603) 228-9218

No. 05-6

IN THE
SUPREME COURT OF THE UNITED STATES

BRUCE W. CATTELL, Warden,
Petitioner

v.

DELVIN WHITE,
Respondent

On Petition For Writ of Certiorari
To the United States Court Of Appeals
For the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should review a decision by the First Circuit which neither creates a new rule of general application, nor conflicts with clearly established law governing the right of a criminal defendant to confront his accuser?

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BRIEF IN OPPOSITION

Delvin White respectfully requests that this Honorable Court deny Bruce W. Catell's ("the Warden's") petition for writ of certiorari.

The First Circuit's decision did not change existing federal law. It did not rule that all defendants have the right to cross-examine their accusers with prior false allegations of sexual assault in all cases. Moreover, it did not decide White's case in a manner inconsistent with either this Court's Sixth Amendment jurisprudence, or established federal precedent.

Rather, the First Circuit held that, under the narrow circumstances presented by this case, the requirement that White show that prior false allegations were "demonstrably false" as a requisite to cross-examination violated White's Sixth Amendment right to confrontation, and the New Hampshire courts' rulings to the contrary were unreasonable. Because the First Circuit's decision is sound, is not in conflict with federal law, and has no ramifications beyond this case, this Court should deny the Warden's petition for writ of certiorari.

STATEMENT OF THE CASE

While the Warden has incorporated into his Petition a short summary of the evidence against White and the circumstances surrounding his pre-trial request to cross-examine his accusers with their prior false allegations of sexual assault, Petit. at 5-7,[1] a more detailed recitation helps to demonstrate the accuracy of the First Circuit's decision.

The First Circuit's opinion includes the following facts:

- On March 2, 1996, White and the girls' father, Wayne, drank heavily, each consuming more than a six-pack of beer;
- There was no medical or forensic evidence of sexual assault;
- The girls' brother, who was in the same room when the alleged assaults occurred, witnessed no assaultive conduct;
- Wayne and his girlfriend, who were in an adjacent room at the time of the alleged conduct, neither saw, nor heard, any assaultive conduct;
- The girls' allegations against White were similar;
- At trial, White "suggested that the girls were alarmed by the extent of their father's drinking with White (Wayne had previously gone to prison for drinking-related offenses) and had sought their

[1] "Petit." designates the Warden's Petition for Writ of Certiorari; "App. Petit." designates the Appendix to that Petition.

father's attention by making up the story of the assaults"; and

- In its closing, the State argued that the girls had no motive or reason to lie.

App. Petit. 2-4.

The First Circuit's opinion also explains, in greater detail than that set forth in the Warden's Petition, White's argument before the trial court that he was entitled to cross-examine his accusers with their prior, false allegations of sexual assault against other men:

> White sought to cross-examine both girls about prior accusations of sexual assault that they had made against three individuals: a neighbor whom both girls had accused of sexually assaulting them in 1993, and who had been acquitted by a jury of the charges in 1994; a cousin whom the older girl had accused of sexually assaulting her, but against whom charges were never brought; and another individual named "Mac" whom the older daughter had accused of sexually assaulting her but who was never identified by the police.
>
> White claimed that all of these prior allegations were false and pointed to evidence available to support that claim if the girls denied making prior false accusations.
>
> . . .
>
> In his motion *in limine*, White pointed to the similarity between the younger girl's accusations against her former neighbor and those against White (both claims involved an older man who had, in her words, "put his finger inside her private" and "reached over with one hand and rubbed her private" while

> sitting next to her on a couch) and a somewhat weaker congruence between the older girl's accusations against "Mac" and hers against White (both touching the outside skin of her vagina). White sought both to cross-examine the girls about their prior accusations and supposed recantations. . . .[2]

App. Petit. 4-6.

Finally, the First Circuit relied on the similarities between the circumstances surrounding the prior, false allegations and those surrounding the allegations against White, in concluding that the state supreme court's decision to uphold a bar on his proffered cross-examination was unreasonable.[3] See, e.g., App. Petit. 11 ("[W]hile sexual assaults may have some generic similarity, here the past accusations bore a close resemblance to the girls' present testimony - in one case markedly so."); App. Petit. 14 ("In our case, as in Redmond, the nature of the motive may be unknown; but if the prior statements are similar enough to the present ones and shown to be false, a motive can be inferred and from it a plausible doubt or disbelief as to the witness' present testimony."); App. Petit. 16 ("We are

---

[2] In both the trial court and the New Hampshire Supreme Court, White additionally sought to introduce extrinsic evidence of the false allegations if the girls denied they were false, e.g., not guilty verdicts, recantations, and other testimony tending to prove the falsity of their prior claims. White did not pursue the extrinsic evidence claim in his habeas petition.

[3] The state supreme court found that the prior allegations were false to a reasonable probability. App. Petit. 54. The First Circuit held that application of the enhanced, "demonstrably false" standard, under the particular circumstances of this case, violated White's constitutional rights. App. Petit. 15.

concerned here with an attempt to pursue by cross-examination prior [and false] past accusations of a quite similar character to the present one . . . with a resulting plausible inference of a motive to deceive that could infect the present testimony of the two vital prosecution witnesses. . . .").

REASONS FOR DENYING THE WRIT

The Warden's Petition sets forth the following arguments:

- The First Circuit's opinion is broad in its impact and scope;
- An accused only has a constitutionally-cognizable right to cross-examination on issues of motive and bias; and
- White's proffered cross-examination regarding prior, false allegations of sexual assault permitted no inference of present-day motive or bias on the part of his accusers.

All of the Warden's assertions fail.

1. The First Circuit's opinion has little impact on the resolution of future cases.

"[T]he Court has said again and again that the writ of certiorari ought not to be employed to bring here cases which, in their essential impact, concern a restricted and perhaps unique set of circumstances and do not involve the pronouncement by a Court of Appeals of a general doctrine on which this Court ought to have the last say." National Labor Relations Board v. Mexia

Textile Mills, Inc., 339 U.S. 563, 573, 70 S.Ct. 833, 94 L.Ed. 1067 (1950). Thus, the Court will deny a petition for writ of certiorari where the issue decided had "few if any ramifications beyond the instant case." Bartlett v. Stephenson, 535 U.S. 1301, 1304, 122 S.Ct. 1751, 152 L.Ed.2d 1015 (2002).

In this case, the First Circuit repeatedly emphasized that its decision was based strictly on the narrow facts presented by White's case, and it did not intend to generally govern the resolution of all future efforts to cross-examine with prior, false allegations of sexual assault. Indeed, the opinion is replete with such caveats.

For example, the Court began its analysis by stating, "given the state court's concession that the falsity of the girls' prior accusations was reasonably probable and the similarity of those accusations to the present ones, we rule that on these facts the state court's decision was an "unreasonable application" of "clearly established federal law, as determined by the [U.S.] Supreme Court."' App. Petit. 10 (alteration in original). After setting forth its analysis, the Court held only that "on the present facts, White was entitled to explore the prior accusations on cross-examination." App. Petit. 15. In addition, the Court stated it was not holding that "New Hampshire's requirement of demonstrable falsity is always and everywhere infirm," explaining that "it is the *application* of New

Hampshire's general rule to the peculiar facts of this case that violates the Constitution." Id. (emphasis in original). Finally, the Court made clear it was not "endorsing any open-ended constitutional right to offer extrinsic evidence." Id.

Accordingly, under the circumstances of this case, the First Circuit's decision did not alter federal law. It did not specifically define the parameters of Davis v. Alaska, nor the impact of Justice Stewart's concurring opinion. Rather, the opinion did little more than resolve issues of importance to the parties in this case. Because the First Circuit's opinion had no "ramifications beyond the instant case," this Court should deny the Warden's Petition.

2. The First Circuit properly applied existing law governing the right to cross-examination.

The First Circuit properly construed, and applied, governing precedent regarding the constitutional right to cross-examination. It properly ruled that the state courts unreasonably restricted that right under the unique circumstances of White's case. This Court should deny the Warden's Petition.

In his Petition, the Warden argues that a criminal defendant only has a constitutionally-cognizable right to pursue cross-examination on issues of witness motive or bias. Petit. at 2-4. The Warden then argues that because White's proffered cross-

examination bore no relationship to motive or bias, he had no constitutional right to cross-examine his accusers with their prior, false allegations of sexual assault. Petit. at 15-18. Both arguments fail.

While the Warden correctly observes that this Court has not addressed the discrete issue presented in this case, Petit. at 13, the Court has characterized as fundamental a criminal accused's right to cross-examination. See, e.g., Coy v. Iowa, 487 U.S. 1012, 1020, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988)("That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult. It is a truism that constitutional protections have costs."); Davis v. Alaska, 415 U.S. 308, 316, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)(cross-examination is "the principal means by which the believability of a witness and the truth of his testimony are tested."); Pointer v. Texas, 380 U.S. 400, 404, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965)("[P]robably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth in the trial of a criminal case.").

Moreover, the Court has not limited the constitution's protection of the defendant's confrontation right to issues of motive or bias, as the Warden claims. Rather, the Court has

held, or implied, that a defendant -- under the unique circumstances of the defendant's case -- has the right to cross-examine on a number of issues, including a witness's ability to perceive, reliably narrate, or recall events. Delaware v. Fensterer, 474 U.S. 15, 19, 106 S.Ct. 292, 88 L.Ed.2d 15 (1985)("[T]he cross-examiner is not only entitled to delve into the witness' story to test the witness' perceptions and memory, but also to impeach, i.e., discredit, the witness.")(internal quotations, brackets, and ellipses omitted); Smith v. Illinois, 390 U.S. 129, 88 S.Ct. 1056, 18 L.Ed.2d 956 (1968)(holding confrontation clause violated where defendant precluded from asking witness his real name); Davis v. Alaska, 415 U.S. 308, 317 n.4, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)(right to cross-examine includes exposing "the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy.")(quoting Greene v. McElroy, 360 U.S. 474, 496, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959)).[4] Thus, Davis cannot be read so narrowly as the Warden contends. 415 U.S. at 318, 94 S.Ct. 1105, 39 L.Ed.2d 347 (Court recognizes right to engage in cross-

[4] Federal cases routinely cite Davis for the proposition that the right to cross-examine extends to issues apart from motive or bias. See, e.g., United States v. Rivera-Santiago, 872 F.2d 1073, 1084-85 (1st Cir. 1989)(citing Davis in support of defendant's right to cross-examine government witness about his psychiatric history); Latzer v. Abrams, 602 F.Supp. 1314, 1319-20 (D.C.N.Y. 1985)(equating bias with witness's ability to identify and remember.)(citing Davis).

examination that would "expose to the jury facts from which the jurors, as the sole triers of fact and credibility, could properly draw inferences relating to the reliability of witnesses."); cf. Fensterer, 474 U.S. at 18, 106 S.Ct. 292, 88 L.Ed.2d 15 ("This Court's Confrontation Clause cases fall into two broad categories: cases involving the admission of out-of-court statements and cases involving restrictions imposed by law or by the trial court on the scope of cross-examination."). Accordingly, to the extent that the First Circuit ruled that White was entitled to cross-examine based on the facts of his case, its opinion broke no new ground. This Court should deny the Warden's Petition for Writ of Certiorari.

However, even if there is only a constitutionally-protected right to cross-examine on issues of motive or bias, as the Warden asserts, the First Circuit properly recognized that legitimate inferences of motive arose from White's proffered cross-examination. As the First Circuit observed, the circumstances of the prior, false allegations were strikingly similar to the allegations against White, both in the conduct alleged, and because the prior and present allegations occurred during periods of time when the girls' father was drinking. App. Petit. 4, 6, 13, 14. Under these circumstances, the girls may have made false sexual assault allegations in the past in order to gain their father's attention, and could have repeated this practice in the

face of their father's return to drinking, during the period of time he was friendly with White. Indeed, the girls' father drank heavily, with White, in the girls' home, on the same day they lodged their allegations against White. App. Petit. at 2.

While the Warden argues that White did not announce an aim to expose motive by cross-examination with the false allegations, this overlooks the record, in which counsel specifically cited the similarities between the prior and present allegations in his offer of proof. App. Petit. at 4. Additionally, the Warden's argument misses the fact that witnesses rarely voice their motives, and thus, parties cannot necessarily be precise in articulating them.

> It must be recognized that bias, like almost every other human emotional or mental condition or attitude, is rarely provable beyond all doubt. In Davis v. Alaska, supra, the Supreme Court did not say the witness was biased; it said he might be . . . But it is equally true that it is generally impossible to be certain whether a witness is 1) truthful, and 2) if truthful, accurate. To assess truthfulness and accuracy, it is necessary, at times, to sift a witness' testimony by means of certain legal devices, such as impeachment.

Johnson v. Brewer, 521 F.2d 556, 563 (8th Cir. 1975)(citation omitted). See also United States v. Manske, 186 F.3d 770, 779 (7th Cir. 1999)("Most experienced counsel avoid attempts to obtain a direct concession from a witness that he is biased, because the witness rarely makes the concession. . . .").

In this case, White's accusers would not likely have admitted that they falsely accused White as they had falsely accused the other men, and for the same reasons. Rather, the fact-finder had to infer motive, which was only possible if the accused had the tools he needed to imply its existence. See App. Petit. 14 ("[T]he nature of the motive may be unknown; but if the prior accusations are similar enough to the present ones and shown to be false, a motive can be inferred and from it a plausible doubt or disbelief as to the witness' present testimony."); App. Petit. 16 (Court cites "plausible inference of a motive to deceive that could infect the present testimony of two vital prosecution witnesses").

The First Circuit correctly apprehended that an inference of motive was reasonably possible in this case, and that the state courts erred by removing it from the arsenal which constituted White's defense -- a defense that rested almost exclusively on cross-examination, and his ability to shed negative light on the girls' credibility. Viewed in this context, the First Circuit's decision is not only consistent with this Court's precedent, but it may readily be reconciled with decisions of other federal courts addressing similar issues. Compare Boggs v. Collins, 226 F.3d 728 (6th Cir. 2000), cert. denied, 532 U.S. 913 (2001) (finding no inference of present motive from prior false

allegations) with Redmond v. Kingston, 240 F.3d 590 (7th Cir. 590)(7th Cir. 2001)(finding inference of motive based on similarity of prior accusation).[5] Accordingly, this Court should deny the Warden's Petition.

[5] White does not conflict with Boggs. In Boggs, unlike White, the Court found no potential inference of motive from the prior false allegations. 226 F.3d at 739. Moreover, White is distinguishable from Boggs on its unique facts. In Boggs, unlike White, there was only a single prior allegation at issue, and the Boggs opinion does not indicate that the prior allegation involved circumstances similar to the present case. Id. at 733. For these reasons, the cross-examination proffered by the defendant in Boggs was not nearly as probative as that propounded by White.

CONCLUSION

WHEREFORE, Delvin White respectfully requests that this Honorable Court deny the Warden's Petition for Writ of Certiorari.

September 16, 2005

Respectfully Submitted,

By _____

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